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HUMAN RIGHTS COMMITTEE

Sixty-fourth session

SUMMARY RECORD OF THE 1707th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 22 October 1998, at 3 p.m.

Chairperson: Mr. BHAGWATI
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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GE.98-18958 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Belgium (CCPR/C/94/Add.3, HRI/CORE/1/Add.1/Rev.1) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Belgium resumed their places at the Committee table.

2. Mr. LALLAH, referring to the question raised earlier by Mr. Klein, said there could be no doubt that actions carried out by Belgium's agents in another country fell within the scope of the Covenant. In fact, the Committee already had jurisprudence on that subject in relation to a case in Latin America in which a State party had sent soldiers in to kidnap a number of persons under another State's jurisdiction. He understood that the two soldiers responsible for the incident in Somalia had been acquitted. What grounds were there for that acquittal, and what defence had been put forward?

3. There were disturbing recent reports of a string of further offences for which Belgian soldiers serving in Somalia had been convicted in the Belgian courts, offences that had included force-feeding a Muslim child with pork until it vomited, tying a Somali child to a vehicle and ordering the vehicle to drive off, procuring and offering a teenage Somali girl as a present at a birthday party, and acts of public indecency. They were all the more horrifying incidents in that the soldiers concerned were serving under the flag of the United Nations, the organization that was author of the Universal Declaration of Human Rights. In all cases the court had imposed only suspended sentences, and the sentences had been confirmed by the military courts. Since serving soldiers naturally tended to develop a mentality different from that of ordinary citizens, it was the Belgian Government's fundamental duty to make sure that its soldiers behaved in a responsible and humane manner when they were serving abroad.

4. On the question of detention, he associated himself with the questions raised earlier about the lack of information in the report on the grounds for pre-trial detention and on why the granting of bail should be the exception rather than the rule. Under article 10 of the Covenant, States parties had an obligation to treat persons deprived of their liberty with humanity. It was not right for the State, in its judicial capacity, to send excessively high numbers of people to prison and at the same time, in its executive capacity, to withhold the funds necessary to reduce prison overcrowding. If the means to remedy that situation were lacking, then sentencing policy would have to be reviewed if the Covenant was not to be violated.

5. Again, a State party had a duty under the Covenant towards illegal foreign workers, who nevertheless contributed to the country's economy by working for low wages. Because of their situation, they would be unlikely to seek redress from the police or the courts if their rights were violated. They should be entitled to seek such redress without fear of being penalized because of their irregular status.

6. On the question of legal assistance to minors referred to in paragraph 19 of the report, the Belgian League for Human Rights had recently drawn attention to the fact that the quality of the aid offered was very poor, in that the lawyers provided were inexperienced and frequently failed to appear. It was something that raised serious questions not only under article 14 (right to a fair hearing) but also under article 24 (right of the child to appropriate measures of protection). Lastly, the right of access to counsel was crucial in relation to article 9, paragraph 4 (right of a detained person to take proceedings before a court), and every State party was duty-bound to ensure that it was guaranteed.

7. Mr. ANDO noted that paragraph 73 included a reference to a pronouncement by the Council of State that solitary confinement "for an indefinite period" did not in itself constitute inhuman or degrading treatment. On the contrary, it did indeed constitute such treatment. He would likewise appreciate clarification of what was implied by the reference in paragraph 74 to a ruling by the Court of Arbitration that interruption of pregnancy did not constitute an act of torture or inhuman or degrading treatment or punishment within the meaning of article 7 of the Covenant.

8. The CHAIRPERSON invited the delegation of Belgium to respond to questions raised.

9. Mr. JANSSEN (Belgium), in reply to questions on the case of Ms. Semira Adamu, said it was true that the officer of the gendarmerie involved had previously received a disciplinary sanction because of misconduct in regard to an alien held in detention. He had been given one month's suspension and transferred to another division. The colonel in charge of the division had decided, in view of the time that had elapsed since the incident, that the officer was now fit for duty and had assigned him to the section dealing with expulsions. It had been a serious error of judgement and the colonel had since resigned. Although the officer in question had not actually held the pillow to Ms. Adamu's face, the question of whether his conduct had contributed to her death would be decided by the criminal investigation currently being carried out.

10. Ms. Adamu's death could certainly have been avoided, but he would point out that restraint by use of a pillow had been resorted to only twice in the course of the previous year and no fatalities had resulted. Use of that technique to prevent yelling and biting had been medically approved, although the regulations required that, in view of the risk of suffocation, account should be taken of the individual's state of health and care should be taken to apply the pillow only to the mouth. Over a period of 16 years there had only been three cases of death in the course of forced expulsion. In addition to the death of Ms. Adamu, one person had died during forced repatriation to Casablanca in 1982, and another during repatriation to Kinshasa in 1987.

11. As to the situation of persons with illegal status, a decision that entry or stay on Belgian territory was illegal did not necessarily mean the person concerned would be expelled. In the case of asylum-seekers, the Commissioner-General for refugees and stateless persons had powers to apply a non-refoulement clause, which meant that even if a person had not been granted asylum he could not be removed from Belgian territory and returned to his

country of origin. While application of the non-refoulement clause was not binding on the Government, the Commissioner-General's recommendations in such cases were always followed.

12. Non asylum-seekers liable to expulsion could have their situation regularized under the Act of 18 December 1980 if there were exceptional reasons for their failure to follow the appropriate procedures. Asylum-seekers who had had to wait for as long as five years for a decision on their status were automatically granted a residence permit. Persons unable to return to their country for reasons beyond their control, such as refugees from Kosovo and Bosnia, were also to be granted temporary residence permits. Those suffering from serious illness and unable to travel were entitled to stay in Belgium until they recovered. Finally, persons who could not be repatriated for serious humanitarian reasons were given resident status. Because of the difficulty of defining criteria for admission to the latter category, the Government had recently decided to set up a commission to advise on individual cases, and the Commission was in process of compiling a manual of case-law on the subject.

13. Persons subject to expulsion orders would not be detained solely as a result of such orders, but as a result of earlier convictions. In the past 20 years only two persons had been expelled because they suffered from certain listed diseases. However, persons suffering from such diseases could be refused entry to Belgium.

14. He was not able to give an exact figure for persons with illegal status in Belgium. Such persons had the right to medical care and to schooling for their children, but not to social or financial assistance. They were entitled to bring complaints to the police or the courts. Persons claiming to be victims of trafficking would be granted a permit to stay in Belgium while their case was being investigated. Illegal residents would not be liable to arrest simply because of their status, but only if suspected of committing a crime.

15. Admittedly, there were not enough closed prison establishments, but that did not mean overcrowding was endemic. Thus, out of five closed centres, one with a capacity of 30 currently had only 13 inmates, and another with a capacity of 112 had only 54. The exception was Centre 127, which had a capacity of 70 but had 84 inmates, due to the fact that another centre was under reconstruction.

16. Unaccompanied children seeking asylum in Belgium were taken to an open centre providing medical, social and financial assistance. Officials at the centre were responsible for following up such cases and reporting on the children's situation, to avoid the risk of their being exploited. A child with illegal status who was not seeking asylum, and whose family could not be traced, was placed with a host family until a permanent solution could be found. He would not be sent back to his country of origin unless it was certain he could be accommodated there. New legislation covering the situation of such unaccompanied children was now being prepared, and he hoped it would be completed by the end of the year.

17. Mr. DEBRULLE (Belgium) pointed out that the Committee had commended his country on its concern for full disclosure in its report of the facts concerning human rights. Specific information had nonetheless been provided that showed up weaknesses in approaches and contradictory or even questionable arguments used by Belgian judicial and other authorities. Members of the Committee had pointed to paragraphs 73, 93 and 172 as indicating shortcomings in the steps taken to fulfil Belgium's commitments under the Covenant. Even in a developed country, full guarantees of human rights took time to develop, and there were still major failings that had to be remedied. With the Committee's help, that would surely be achieved. The responses to the list of issues were perhaps unsatisfactory, but the Belgian delegation had received the list only very recently. It would, however, address those issues much more thoroughly in a written reply.

18. The Committee had drawn attention to incidents in the judicial and immigration fields that had marked the country's recent history, and one member had described them as being the tip of the iceberg. It was regrettable that those dramatic accidents had had to occur before a number of institutions had been seen to be functioning badly. There were no grounds, however, for doubting the country's ability to correct those serious mistakes. He had already described reforms in the judiciary and police, the establishment of new immigration centres and the reaction to the tragic incident of Ms. Semira Adamu's death.

19. Fortunately, Belgium possessed a number of institutions that would facilitate the prevention, investigation and correction of the flaws identified in recent months. The Centre for Equal Opportunity and Action to Combat Racism was an independent institution, set up in 1993, which had already demonstrated its competence and dynamism in providing advice and information, and had greatly aided the authorities in identifying and correcting practical problems. One of its achievements had been to bring civil action in court in a number of cases, including the incidents marking the service of Belgian military forces in Somalia.

20. Another useful institution was the police control committee. It, too, had been established fairly recently and had already brought to light a number of facts. As an external watchdog body directly administered by Parliament and with authority to investigate all branches of the police, its purpose was to ensure the protection of individuals as guaranteed by the law and the Constitution and to facilitate the coordination and efficiency of the police force. It had five members appointed by Parliament and a 14-member investigation branch which could both carry out investigations upon request and initiate them.

21. Since the Committee had asked many questions on immigration and asylum policy, he wished to outline a number of initiatives that demonstrated Belgium's willingness to abide by its commitments under the 1951 Convention. With the particularly strong immigration pressures at present, Belgium had to strike a proper balance between respecting its international commitment to harbour asylum-seekers and coping with the adverse effects of illegal immigration. Belgium had been the first country in Europe to adopt a law on the right of asylum: in 1833, when Polish resistants against Tsarist Russia were taking refuge in the country. Belgium applied both the spirit and the

letter of article 33 of the 1951 Convention, concerning prohibition of expulsion or return of refugees. When a request for asylum coincided with an extradition order, the order was suspended until the request had been processed. That was particularly noteworthy today, when there were great pressures to reverse that principle and to give priority to extradition orders over asylum proceedings.

22. Many members had asked how Belgium's commitments under the Covenant and other international instruments could be implemented when Belgian nationals committed certain acts outside the country - for instance in Somalia. Irrespective of where an act was committed, Belgian jurisdiction applied, as could be seen by the proceedings instituted in Belgium against a number of Belgian nationals in which some had been convicted and others acquitted. The public outcry against the light sentences handed down had been strong, both at home and abroad, but the sentences and the acquittals had had a positive impact, as they had speeded up the implementation of a Government decision to abolish military courts and to transfer their jurisdiction to the regular courts. A draft law giving effect to that decision was currently under preparation. Belgium had been cited in Amnesty International's report for its failure to disclose the full facts about the events in Somalia, but that failure was being rectified: 270 investigations had been launched into those events and some of them had already been completed.

23. Questions had been asked about the federal structure and whether it promoted or obstructed respect for human rights. Certainly, it did create practical difficulties. He had mentioned in his introduction article 53 of the Protection of Youth Act, which had not yet been abolished, although responsibility in that domain had been given to the Communities. That raised certain questions, indeed disputes, about who was actually responsible for such measures. There was no question, however, about Belgium's international commitments, which continued to be fulfilled by the Federal State, and after the reforms of 1993 measures had been taken to alleviate any deficiencies in compliance by federated entities with the commitments entered into earlier by the Federal State.

24. It was true that under Belgian law, no right of access to lawyers or physicians was authorized during the first 24-hours of police custody. Moveover, it was precisely during that brief but critical period that abuses occurred. The European Committee for the Prevention of Torture had drawn attention to that problem. A working group was now looking into the question of how to reconcile respect for the dignity and health of detained persons with the need to uncover the truth. Forms were being prepared setting out in various languages the rights of individuals held by the police, including the rights of access to lawyers and to physicians.

25. As for detention in non-prison facilities, including psychiatric wards, the European Court of Human Rights had indeed ruled against Belgium in a case involving a person's detention in a prison psychiatric annex for nine months. The problem had arisen because of the small number of places available in Social Protection Establishments, but a major effort was now being made to overcome it, especially in the south of the country. A committee had been established in September 1996 to make proposals on legislation and practical

matters relating to detention. A total of 155 places were now available in Social Protection Establishments, and there were only three persons awaiting placement in such facilities today.

26. The Court of Cassation's pronouncement concerning the death penalty was no longer valid, as the death penalty had since been abolished. Belgium included in all of its bilateral treaties on extradition a provision permitting it to refuse extradition if the person concerned might be liable to capital punishment as a result.

27. None of the parliamentary initiatives on euthanasia had yet been adopted because of continuing doubts about the advisability of regulating such a delicate matter by legislation. At the same time, however, a number of palliative care measures were being developed in hospitals to ensure that death was faced with serenity and in an atmosphere of respect for human dignity.

28. For several years his country had been carrying out a major training programme to prevent police brutality. The training was based first of all on the law, particularly the obligation laid down in the Police Functions Act concerning respect for human rights and human dignity. The courses were part of the compulsory training for police officers in all branches of the service. The centre for Equality of Opportunity and Action to Combat Racism, in collaboration with a number of NGOs, gave courses to members of the police force as well as to prison staff and immigration officials to raise awareness and help them deal with difficult situations. The Office of the United Nations High Commissioner for Refugees was likewise helping in the training of administrative staff assigned to handle requests for asylum and immigration problems. Lastly, police officers received therapeutic aid in coping with the stress of their jobs.

29. With regard to the ambiguous reference in paragraph 13 of the report to the non-application of an article of the Covenant, he pointed out that in Belgium, international norms took precedence over domestic legislation, even in the event of conflict, and international norms were directly applicable to the extent that the courts deemed they were sufficiently clear in themselves and did not have to be specially transposed into domestic law.

30. Questions had been raised about a difficult problem for many countries: organized crime. The Belgian draft law on the subject sought to strike at the very structure behind organized crime, not at the offences committed by individuals, and to indict even persons whose involvement in crime was masked by legitimate activities. The European Union, too, had been discussing common action to inculpate criminal organizations, but the Belgian Parliament considered that the proposals went too far, although 14 other Members of the Union found them acceptable. Efforts were being made to resolve the problem with a view to adopting the common European initiative. The objective of striking at organized crime was very well worth pursuing, but protection by the law, equal access to justice and presumption of innocence had to be guaranteed.

31. Measures adopted to end the lucrative trade in paedophile materials had proved to be inadequate. Belgian legislation targeted demand as well as

supply of such materials and made their possession a criminal offence, but that approach had not yet been adopted by other members of the European Union. For the prosecution of sex tourism, judicial orders concerning double jeopardy had to be waived and national courts must be given extraterritorial competence. Belgian legislation had accomplished that task and it was hoped that other countries would follow suit.

32. Belgium took into account European initiatives, such as the expansion of the drug unit in EUROPOL and the joint management by EUROPOL and INTERPOL of data on sex criminals so as to prevent them from exporting their activities and to facilitate the arrest of recidivists.

33. In reply to remarks by Ms. MEDINA QUIROGA and Lord COLVILLE, he said that responses to their questions concerning paragraphs 94, 97, 172 and 174 of the report and on the supervision of people on parole and doing community service would be given in writing.

34. With reference to question 4 (a) in the list of issues, drew attention to paragraphs 254 to 271 of the report, which explained in some detail the situation regarding restrictions on freedom of expression. In addition, paragraph 278 explained the situation as regards freedom of assembly, particularly outdoor meetings. So far as the audio-visual media were concerned, he had, at the previous meeting, explained the circumstances in which a civil court of first instance could prohibit a publication or broadcast clearly constituting an infringement of the rights of a third party. The judge of first instance taking such preventive action was required not to prejudge any subsequent decision on the merits of the case and to weigh the interests involved against the principle of freedom of expression. The freedom of expression of officials (paras. 242 to 245) had been considerably expanded as a result of the recent revision of the Civil Service Regulations.

35. As to question 4 (b), article 2 of the EEC Directive "Television Without Frontiers" had been incorporated in the Flemish Community's regulations pursuant to a decree adopted on 28 April 1998. Television programmes from countries outside the European Union could be distributed by cable television subject to a simple administrative procedure. In the French Community, a draft decree bringing the regulations more closely into line with the EEC directive was currently under consideration. The text of the draft was available to members for consultation.

36. Question 5 was partly covered by his earlier comments concerning question 4 (a). As already explained, the Belgian Constitution, in articles 26.1 and 26.2, distinguished between meetings and demonstrations. So far as the former were concerned, the present regulations were considered to be entirely compatible with article 21 of the Covenant; the only type of meeting that might require prior authorization was an "attroupement", as defined in paragraph 278 of the report, which the police could regulate in certain clearly defined circumstances. As for demonstrations (article 26.2 of the Constitution), they were considered to fall not within the scope of article 21 of the Covenant, but, rather, of article 18 and, possibly, of article 19.

37. Replying to question 6 (a), he referred to his country's third and fourth reports to the Committee on the Elimination of Discrimination against Women, which provided detailed information about policies and steps to ensure equality of women in Belgium. As to the participation of women in public and political life, there were five women Ministers, including two at Federal level. The Executive Council of the French Community was headed by a woman. There was currently one woman among the country's nine provincial governors and two women among its five Procurators-General. The latest report to CEDAW also included information about women in the diplomatic service and on the boards of public and private enterprises. Campaigns were being conducted to promote positive action, enhance public awareness and eliminate discrimination against women. As for the question of pensions, the retirement age for women was to be aligned with the corresponding age for men by the year 2009. It could generally be said that, while a hiatus still existed between law and practice, certain undeniable advances had been achieved.

38. With reference to question 6 (b), a distinction had to be drawn between immigrants from the Maghreb and Turkey on the one hand and those from Italy on the other, the latter country being, of course, a member of the European Union. With regard to the former category of immigrants, he drew attention to the role of the Centre for Equal Opportunity and Action to Combat Racism. The text of a decree on ethnic and cultural minorities adopted by the Flemish Community on 25 April 1998 was at the disposal of members of the Committee.

39. Lastly, in regard to question 6 (c), paragraph 351 of the report spoke of the cultural pact (Act of 16 July 1973). The object of Belgium's cultural policy was to ensure pluralism and to avoid excluding access for certain philosophies and ideologies to facilities available for cultural purposes. For example, radio and television in the French Community was administered by a Council composed of members elected on the basis of proportional representation, so that all political parties could have a say in the matter. A conciliation procedure was initiated in the event of disagreement. The term "ideological and philosophical minority" applied to groups characterized by a philosophical or ideological tendency based on a specific concept of life or society. It should be noted that no community or organization could be considered to represent a particular ideology or philosophy without its consent.

40. Ms. Chanet took the Chair.

41. Mr. YALDEN, referring to the question of equality of women, said that the report included an impressive list of provisions but gave few details of specific steps taken. While noting the references made to a report on the subject submitted to another United Nations body, he would point out that the reporting procedure under article 40 required all relevant details to be included in the report submitted to the Human Rights Committee. Furthermore, CEDAW's concluding observations on Belgium's latest report showed that the members of that body had also found the report to be short on statistics. What were the results of positive action taken to improve the situation of women in employment? More information on the activities of the Council for Equal Opportunity between Men and Women would be appreciated. It could be provided in writing.

42. He could see nothing in the report about the situation under Belgian law with regard to discrimination against homosexuals or, more generally, discrimination in employment and elsewhere on the basis of sexual orientation. With regard to the question of linguistic minorities, additional information would be useful on the system of teaching in minority languages in the Walloon Region. How was that system compatible with the requirements of article 27?

43. In the matter of the rights of non-Belgian minorities, the Committee's concluding observations on Belgium's second report had identified the difference in the civil rights enjoyed by citizens and aliens, respectively, as being one of the principal sources of concern. A similar concern had recently been expressed by CERD. In spite of those comments, the present report contained very little factual information; the last paragraph (para. 355) could be described as both lapidary and vague. More details would be appreciated, especially in view of the large size of the non-Belgian minorities. Precisely what was the ethnic composition of the Kingdom? What measures were being taken to promote and safeguard the rights of non-Belgians and their integration in the life of the country? Was the fact that aliens were not allowed to register for residence in certain communities compatible with Belgium's international obligations? What constituted legal grounds for deportation? Lastly, he asked for details concerning the activities of the Centre for Equality and Action to Combat Racism, including the number of complaints received by the Centre, any court actions brought, etc.

44. Mr. ZAKHIA requested clarification of paragraphs 52 to 55 of the report. In the event of conflict, did the Court of Arbitration apply the Constitution or the Civil Code? On the question of equality of women, he joined in Mr. Yalden's request for further details, especially on the number of women in senior posts. Again, he wondered whether the requirement of prior authorization for gatherings of "more than three people" (para. 278) was compatible with the spirit of article 21. Paragraph 300 of the report indicated that the civil court of first instance could halt what were considered to be "flagrant irregularities" on the part of striking workers. He would like a clearer definition of the concept of "flagrant irregularities". Lastly, was Belgium experiencing any problems in connection with trafficking in women from the countries of eastern Europe, and if so, what measures were being taken in that connection?

45. Ms. MEDINA QUIROGA asked for information about the procedure for annulment of fake marriages (para. 208), a point which could give rise to problems with article 17. She also expressed doubt about the compatibility of the Revisionism (Suppression) Act of 23 March 1995 (para. 263) with article 19. As she understood it, the offence established by the Act was the simple rejection of genocide, or detraction from its importance. Did the paragraph fully reflect the contents of the offence or was it merely a simplified version?

46. Mr. ANDO, referring to paragraphs 190, 193 and 194, asked for further information about the Central Social Security Data Bank and the Commission for the Protection of Privacy. What was the Commission's membership? What were the Commission's powers? Were its decisions subject to judicial review? Regarding paragraph 230, were adherents of faiths not included among the six faiths recognized by Belgium subject to discrimination of any kind?

Apparently, persons belonging to minorities received protection "in that capacity, and not as component individuals thereof" (para. 346), and he asked whether that was consistent with the Committee's general comment on article 27. He would also like further clarification of the concept of "ideological and philosophical minorities" (para. 347). Lastly, in connection with paragraph 278, already mentioned by Mr. Zakhia, who decided whether an assembly was a "gathering" or a "demonstration"? Was there a possibility of judicial review of such decisions, and what remedies were provided?

47. Mr. BHAGWATI, referring to the activities of the Council for Equal Opportunity between Men and Women, asked what steps had been taken to follow-up a query raised by ILO in 1996 concerning segregation of trades and underassessment of women's work.

48. In regard to paragraph 296, he asked in what circumstances public officials could be sanctioned for abuse of the right to strike. Had specific criteria been established in that regard? Paragraph 298 stated that the Act of 19 August 1948 limited the right to strike by allowing workers to be requisitioned for "indispensable tasks". How were such tasks defined and had any judicial decisions been rendered on that point?

49. Again, what steps had been taken to remedy the shortcomings mentioned in the 1997 report on Belgium by the Special Rapporteur of the Commission on Human Rights on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers in Belgium?

50. Ms. EVATT said she was not entirely satisfied with the delegation's response to the questions in paragraph 5 of the list of issues.

51. In addition, the report offered little information about the extent of racism and racist tendencies in Belgium. She inquired about the activities and achievements of the Centre for Equal Opportunity and Action to Combat Racism and asked whether the Act of 12 April 1994 (para. 261) had proved effective in combating racist tendencies. Limitations on the areas in which aliens could reside (para. 136) were likely to encourage intolerance and racism and were, in her view, incompatible with the principle of equality laid down in the Covenant. In connection with paragraph 314, she observed that the practice of subjecting marriages between Belgian citizens and foreigners to inquiry could arouse suspicion that there was an element of racism involved. She also questioned the compatibility of the content of paragraph 314 with the provisions for the protection of the family in articles 17 and 23 of the Covenant.

52. Mr. LALLAH said it was very gratifying to hear that the Covenant was held to be applicable to Belgium in respect of the incidents that had occurred in Somalia.

53. Mr. DEBRULLE (Belgium) said that the delegation had taken careful note of all the questions asked and would transmit written answers to those it was unable to deal with at the present meeting.

54. Belgium's future reports to the Committee would include the material on gender equality which had been omitted because it had been covered in the report to the Committee on the Elimination of Discrimination against Women.

55. From the legal point of view, there was no discrimination in Belgium on grounds of sexual orientation, but he would not venture to say that discrimination did not exist in practice. He would make further inquiries and report back to the Committee.

56. With regard to the application of article 27 of the Covenant to foreigners, he cited a case referred to the Correctional Court of the Province of Limburg. The communal authorities had refused to accept an identity photograph in which the individual concerned was wearing a headscarf. The Bourgmestre had been unwilling to differentiate between the inhabitants of the commune and felt that the wearing of a headscarf indicated an unwillingness to integrate into Belgian society. An appeal had been lodged against the decision and the Correctional Court had ruled that it was desirable but not compulsory for the hair and ears to be uncovered in an identity photograph. Neither the 1991 Act nor the 1992 Circular were to be interpreted as authorizing the communes to use identity cards as a policy instrument for the integration of foreigners. The court had ordered the communal authorities to issue an identity card bearing the photograph in the form in which it had been originally presented.

57. He shared the view that the Royal Decrees mentioned in paragraphs 136 to 139 of the report were incompatible with article 12 of the Covenant. The Decrees in question had ceased to be operative in 1995. Although article 18 bis of the Act of 15 December 1980 remained unchanged, it was inapplicable in practice because the implementing regulations had not been renewed. Admittedly, only scanty information had been given on the status and activities of the Centre for Equal Opportunity and Action to Combat Racism. However, further information, including the Centre's annual report for 1997, would be transmitted to the Committee. It was a dynamic body with a highly motivated staff who were committed to the fight against discrimination and racism through awareness-building and legislative and practical reform. Where a Belgian court was seized of a dispute concerning the alleged incompatibility of a domestic legal provision with the principles of equality and non-discrimination laid down in the Covenant, it was required, in accordance with Belgian case law, to ensure that the Covenant provision prevailed.

58. Belgium had, unfortunately, been affected in the 1990s by the phenomenon of trafficking in young women, young men and children, particularly from eastern Europe. Resolute action was being taken to track down the networks involved. The over-compartmentalization of the agencies involved in combating the phenomenon had been mitigated by the establishment of an interministerial coordinating commission which had achieved appreciable results. Searches had been carried out, individuals had been persuaded to collaborate in dismantling the networks in return for immunity from prosecution, and cooperation agreements were being negotiated with countries such as the Philippines to ensure the social rehabilitation of the victims of trafficking. Belgium was cooperating with other States members of the European Union to extend the application of the Europol Convention so that the police force created under the Convention could operate in cases of trafficking in human beings.

59. Mr. Ando had rightly drawn attention to an error in paragraph 346 of the report. Belgium interpreted article 7 of the Covenant as referring to the rights of individuals belonging to minorities and not to the collective rights of minorities.

60. With regard to the means employed to detect fake marriages, there were specific procedures for the publication of marriage banns and for obtaining a visa to enter Belgium for the purpose of contracting marriage or reuniting a family on the basis of a marriage contracted abroad. Under the Circular of 28 August 1997, the fact that a foreigner was living illegally in Belgium did not prevent publication of the marriage banns. With a view to preventing marriages of convenience, the Ministry of Justice and the Ministry of the Interior had issued a joint circular concerning the conditions in which a civil registrar could refuse to perform the marriage ceremony. The circular was not directed against mixed marriages but was designed to address situations in which the purpose of the marriage was manifestly not to create a lasting partnership but solely to obtain an advantage from the change in personal status. The legality of the circular, particularly with respect to the competence of the civil registrar, had been challenged and a working group was currently looking into the matter.

61. The purpose of the provision of the Act of 23 March 1995 mentioned in paragraph 263 was to prosecute anyone who condoned revisionism, i.e. denial of the genocide committed by the National Socialist regime in Germany during the Second World War. The Belgian Parliament was considering a bill that would incorporate in domestic legislation the criminalization of genocide contained in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide and was seeking to establish whether ratification was a sufficient basis for the legal system to punish the crime of genocide, for example in a country such as Rwanda, with which Belgium had a special relationship.

62. Racist statements and tracts were punishable by means of Assize Court proceedings which were very complicated and had only been used on one occasion. The authors of the tracts concerned had been dealt with somewhat leniently. A more effective means of punishing such offences must therefore be found. The Parliament was currently discussing whether political parties that advocated racism and the denial of human rights and fundamental freedoms could continue to enjoy public funding on the same footing as other parties.

63. The Belgian system of data protection was based on a law enacted in 1992. The parliamentary Commission for the Protection of Privacy had established a number of sectoral bodies dealing, inter alia, with the management and processing of social data. The Commission was endeavouring to standardize case law with respect to data processing, access to data and, for example, the right to correction and deletion of data.

64. In addition to the religions enumerated in the report, the State also recognized secular status, i.e. the status of those with no religious belief. The recognized religions enjoyed public funding. The main criterion for recognition was representativeness in terms of the number of followers in Belgium.

65. With regard to the cases in which disciplinary sanctions could be imposed for abuse of the right to strike, a number of agreements had been concluded between trade unions or professional associations and employers in both the civil service and the private sector. They required, for example, that notice be given of any plan to call a strike. Failure to do so could entail disciplinary action.

66. The "indispensable tasks" for which workers could be requisitioned were essential services to the community. For example, when a doctors' strike had been in danger of jeopardizing public health, an injunction had been issued to ensure that essential services were maintained. If there was a strike in the energy sector, steps would be taken to maintain the power supply to hospitals.

67. The Special Rapporteur of the Commission on Human Rights mentioned by Mr. Bhagwati had submitted a provisional report. He had actively participated in recent meetings to discuss the reform of the judiciary and would visit Belgium again at the end of November 1998 for further talks with a view to finalizing his report.

68. The scope of the Act of 30 July 1991 on racism had been expanded, but it was not yet entirely satisfactory. No action had been taken on many of the complaints filed. However, the Minister of the Interior possessed powers of "positive injunction" and could issue a circular urging the judiciary to see to it that certain legal provisions were actually implemented in practice.

69. With regard to the non-applicability of article 14, paragraph 3, of the Covenant to examining magistrates, the reasoning of the Court of Cassation had been that examining magistrates did not take decisions on the merits of a case. Article 16, paragraph 1, of the Belgian Act concerning pre-trial detention stipulated that an arrest warrant could not be issued with the purpose of inflicting immediate punishment or subjecting an individual to any form of duress. The European Court of Human Rights recognized the non-applicability in similar circumstances of article 6 of the European Convention on Human Rights, which was equivalent to article 14, paragraph 3.

70. The CHAIRPERSON complimented the Belgian delegation on its detailed replies to the Committee's questions.

71. The third periodic report was well-structured and contained all the relevant legal references, but the Committee would welcome the inclusion of more practical information in the next report.

72. Belgium as a democratic country was wide open to media coverage of, for example, miscarriages of justice, the expulsion of foreigners and the incidents involving Belgian soldiers in Somalia. The Committee had expressed concern about those matters and the Belgian Government was apparently aware of its shortcomings. It was cooperating with the Special Rapporteur of the Commission on Human Rights in reforming the judiciary. The methods used in expelling foreigners were to be reformed, an independent authority had been set up to investigate police brutality and investigations of the allegations against Belgian soldiers in Somalia were under way.

73. There seemed to be less willingness to reform the existing regulations governing police custody. Detainees were most vulnerable during the first 24 hours after arrest if they were denied access to a lawyer and a doctor. It was the period during which ill-treatment could occur and confessions could be extorted.

74. The Committee had stressed issues relating to fundamental freedoms in connection with the system of mandatory prior authorization in the case of, for example, television broadcasts and outdoor meetings. It seemed to establish prohibition as the norm instead of recognition of the rights set out in article 19, paragraph 3.

75. The Committee's written observations would be forwarded to Belgium in due course and would no doubt assist the authorities in preparing their fourth periodic report.

76. Mr. DEBRULLE (Belgium) noted that the Committee's questions had been well-focused and demanded precise answers, which was, of course the purpose of the exercise. The delegation would respond in greater detail in due course, particularly to the issues just raised by the Chairperson. An effort would also be made to provide more practical details in the next report.

77. The delegation of Belgium withdrew.

The meeting rose at 6.15 p.m.